

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COURTLAND ROMEO,	§	
	§	No. 114, 2010
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE	§	ID No. 0706001130
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: April 4, 2011

Decided: May13, 2011

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

ORDER

This 13th day of May 2011, it appears to the Court that:

(1) Defendant-Below/Appellant, Courtland Romeo, appeals from his Superior Court jury convictions for murder first degree and possession of a firearm during the commission of a felony (“PFDCF”). Romeo contends that he “is entitled to a reversal of his conviction because of an atrocious perjury that was committed.” We find no merit to Romeo’s appeal and affirm.

(2) Late one evening nearly three years ago, Wilmington Police officers responded to a 911 call. When the police officers arrived at the nearby scene, they observed between seventy-five and one hundred people in the middle of the city street. The police officers made their way through the crowd and discovered an

individual who was bleeding from his head. After one of the police officers administered CPR, the injured individual was transported to a hospital and pronounced dead shortly thereafter. It was determined that the individual, Antoine Mayo, died from a penetrated gunshot wound to the arm and chest and the injuries that resulted.

(3) After an investigation, Romeo was charged by indictment with murder first degree, PFDCF, and possession of a deadly weapon by a person prohibited (“PDWBPP”). Romeo moved to sever the PDWBPP count. The Superior Court granted that motion and the matter proceeded to a trial, where the Superior Court ruled on the PDWBPP count and the jury addressed the murder first degree and PFDCF counts. The Superior Court convicted Romeo of PDWBPP, but the jury deadlocked on the other two counts.

(4) A retrial was then held over five days. Several witnesses testified. The mother of Mayo’s daughter, Diana King, testified that she and several other individuals, including Romeo, had been drinking alcohol all throughout the day that Mayo died. King testified that, later that evening approximately nine hours after the group had started drinking, Mayo came to their location to take King’s children home. King testified that she, her children, and Romeo walked into the street to meet Mayo. King also testified that Romeo and Mayo exchanged words and that Romeo smirked at Mayo. King testified that Mayo’s cousin (Ray) and

several other individuals appeared and that a physical confrontation ensued among the members of the group.

(5) Ray also testified at Romeo's trial. Ray testified that Romeo fired a shot into the ground approximately one foot from Mayo. Ray then testified that "[r]ight after th[at] first shot went off into the ground, the defendant raised his arm, pointed the gun at [Mayo], and shot about three more times." Ray's sister also testified that she observed Romeo fire a weapon at Mayo.

(6) Christina Thomas also testified at the trial. Thomas was nine years old at the time of Mayo's death. Thomas testified that she heard some men arguing outside of the house that she was visiting that night. Thomas testified that she looked out of the window of the house and saw several men. Thomas also testified that she saw one of the men drink from a beer bottle, place the beer bottle on the steps of the house next door, and then say, "Let's get it popping." Thomas testified that the man who drank from the beer bottle was wearing a white t-shirt and was involved in the events that night. Thomas also testified that she observed a man in a black t-shirt fire a weapon three or four times that night.

(7) Also at Romeo's trial, Sergeant Alfred Filippone testified that a fingerprint was lifted from the beer bottle that was left on the steps of the house adjacent to where Thomas was visiting. Filippone testified that the fingerprint

matched Romeo. The State also presented testimony that established that DNA taken from that beer bottle matched Romeo.

(8) Three other exchanges that occurred at Romeo's second trial are relevant to Romeo's claim on appeal. First, Thomas's interview with Wilmington Police Detective Eugene Solge was admitted into evidence pursuant to title 11, section 3507 of the Delaware Code. During that interview, the following exchange occurred:

Solge:	Ok. Um, the same guy who fired the gun and this is very important. The same guy who fired the gun, is he the same person that had the bottle of beer? Could you tell that, or no?
Thomas:	(Shaking head no)
Solge:	No you can't tell?
Thomas:	I can't tell.
Solge:	You can't tell. Ok. You're just not sure?
Thomas:	Uh huh.
Solge:	Ok. That's fine. . . .

The second relevant exchange occurred during the prosecutor's direct examination of Solge:

Q:	. . . Do you recall whether or not Christina Thomas was able to tell you whether the same person who put the beer bottle down was the same person who was the shooter?
A:	That is correct.
Q:	Do you recall what she said about that?
A:	She said the same person who had the beer bottle was the shooter.

Finally, the third relevant exchange occurred during defense counsel's cross examination of Solge:

Q: And [the prosecutor] showed you a portion of a transcript of th[e] statement [Thomas] gave you . . . , correct?

A: Yes, sir.

Q: And the one question that she pointed out to you was a question where you were saying can you be sure that the person that put down the beer bottle was not the shooter, right?

A: Correct.

Q: And she said she couldn't be sure, right?

A: Yes, sir.

(9) During closing argument, the prosecutor attempted to discredit Thomas's testimony, stating: "Who had the best vantage point? Did Christina Thomas have the best vantage point from 139 feet away or did Fred Holden, [Diana] King, Sheila Mayo, and Ray Mayo have the best vantage point being on the street that night." The prosecutor also stated:

[Thomas] certainly saw the defendant put the beer bottle down. That was right in front of her face, but use your common sense. Is she just confused at this point between what other people told her they saw? She really -- was she really able to get a good look? She was 139 feet away. She didn't have her glasses on. She couldn't see anybody's face when he was eight to 10 feet in front of her. She could describe the clothing at that range, but her vision wasn't good enough

(10) The jury ultimately found Romeo guilty of murder first degree and PFDCF. For those convictions, as well as the PDWBPP conviction, the Superior Court sentenced Romeo to life plus twenty-eight years in prison.

(11) This appeal followed. Defense counsel moved to withdraw and filed an opening brief pursuant to Supreme Court Rule 26(c).¹ Romeo supplemented defense counsel's position with one argument: his convictions should be reversed because Solge committed perjury. The State moved to affirm. After reviewing the record, we could not conclude that Romeo's appeal was wholly without merit and so totally devoid of any arguably appealable issue that it could be decided without an adversarial presentation. We granted defense counsel's motion to withdraw and appointed substitute counsel to represent Romeo in this appeal.

(12) Romeo argues that we should reverse his convictions because Solge committed perjury. Romeo did not raise this argument below. Consequently, we review his claim for plain error.² "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."³ "Furthermore, the

¹ Rule 26(c) relevantly provides: ". . . If the trial attorney, after a conscientious examination of the record and the law, concludes that an appeal is wholly without merit, the attorney may file a motion to withdraw. . . ."

² See Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."); *Turner v. State*, 5 A.3d 612, 615 (Del. 2010) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).

³ *Turner*, 5 A.3d at 615 (quoting *Wainwright*, 504 A.2d at 1100).

doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”⁴

(13) The Delaware Code provides that a person is guilty of perjury when he “swears falsely.”⁵ The Delaware Code also provides that “[a] person ‘swears falsely’ when the person *intentionally* makes a false statement or affirms the truth of a false statement previously made, knowing it to be false or not believing it to be true, while giving testimony.”⁶ We have explained that the State’s knowing use of false or perjured testimony violates due process.⁷ We also have explained that mere contradictions in a witness’s testimony may not require reversal because those contradictions may not constitute knowing use of false or perjured testimony.⁸ Rather, mere contradictions in trial testimony establish a credibility question for the jury.⁹ In the event that the State knowingly uses false or perjured testimony to obtain a conviction, the United State Supreme Court has held that the

⁴ *Id.*

⁵ 11 *Del. C.* §§ 1221, 1222 & 1223.

⁶ 11 *Del. C.* § 1224 (emphasis added).

⁷ *Jenkins v. State*, 305 A.2d 610, 616 (Del. 1973) (citing *Napue v. Illinois*, 360 U.S. 264 (1959)).

⁸ *Id.* (citing *Zutz v. State*, 160 A.2d 727 (Del. 1960)).

⁹ *Knight v. State*, 690 A.2d 929, 932 (Del. 1996) (“It is well-settled that the trier of fact ‘is the sole judge of the credibility of the witnesses and responsible for resolving conflicts in the testimony.’”) (citing *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980)). *See also Koch v. Puckett*, 907 F.2d 524, 531 (5th Cir. 1990) (“[C]ontradictory trial testimony . . . merely establishes a credibility question for the jury.”) (citing *Little v. Butler*, 848 F.2d 73, 76 (5th Cir. 1988)).

conviction “must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.”¹⁰

(14) Here, Romeo has not shown that Solge intentionally made, or the State knowingly used, a false statement. Although Solge’s response on direct examination was inaccurate, defense counsel elicited a contrary (and accurate) response on cross examination. To make its factual findings, the jury used, among other things, Solge’s contradictory testimony, Thomas’s testimony, Thomas’s section 3507 statement, and eye-witness testimony. Further, in closing argument, the prosecutor did not mention Solge’s inaccurate statement, but instead questioned Thomas’s ability to identify the shooter. In these circumstances, we conclude that Romeo has not shown plain error.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹⁰ *United States v. Agurs*, 427 U.S. 97, 106 (1976) (citing *Pyle v. Kansas*, 317 U.S. 213 (1942)). See also *Giglio v. United States*, 405 U.S. 150, 154–55 (1972) (“A new trial is required if ‘the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury’”) (citing *Napue*, 360 U.S. at 271).